

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**FAA CONCORD T, INC., D/B/A CONCORD
TOYOTA**

Employer

and

Case 32-RC-255130

**MACHINISTS AUTOMOTIVE TRADES
DISTRICT LODGE NO. 190, MACHINISTS
LOCAL 1173**

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

FAA Concord T, Inc., d/b/a Concord Toyota (the Employer) is engaged in the retail sale and service of new and used automobiles at its Concord, California facility (the Facility). Petitioner Machinists Automotive Trades, District Lodge No. 190, Machinists Local 1173 (the Petitioner) currently represents a bargaining unit of approximately 50 parts personnel and repair technicians. The Employer has a collective-bargaining agreement with the Petitioner covering the parts personnel and repair technicians (the technicians), and with the Teamsters General Truck Drivers, Warehousemen, Helpers and Automotive Employees Local No. 315 (the Teamsters) representing porters, detailers, and shuttle drivers, that is effective from September 9, 2018 through September 8, 2021 (the Agreement). Petitioner seeks an *Armour-Globe* self-determination election to add nine full and part time advisors to the existing unit of parts personnel and technicians.¹ The advisors consist of three subcategories: (1) service advisor; (2) floating advisor; and (3) and internal advisor.

The Employer maintains that the petitioned-for advisors do not share a community of interest among themselves. Specifically, the Employer contends that the service advisors and the internal advisor do not share a community of interest. The Employer also contends that the advisors do not share a community of interest with the technicians and parts employees in the existing unit represented by the Petitioner. The Employer further maintains that the advisors may have a community of interest with other employees including a unit of employees represented by a different labor organization, and/or with remaining employees of the service department who are currently unrepresented such that not including those other unrepresented employees would leave them out and unable to seek representation.

The Petitioner contends that the advisors are a distinct and identifiable voting group that shares a sufficient community of interest with the technicians and parts personnel in the existing unit, such that their inclusion in a unit with technicians and parts employees would be appropriate.

¹ *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).

A hearing officer of the Board held a hearing in this matter on February 5, 2020. Petitioner and the Employer appeared at the hearing and the parties filed timely post-hearing briefs with me, which I have duly considered. As evidenced at the hearing and on brief, and explained in more detail below, the only issue before me is the one raised by the petition in this matter, whether the advisors should be allowed to vote in an *Armour-Globe* election to determine if they wish to be included in the existing unit of the Employer's parts personnel and technicians already represented by the Union.

I have carefully considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth below, I find that the advisors constitute a distinct, identifiable voting group that shares a community of interest with both the parts employees and technicians in the existing unit. I am therefore directing a self-determination election among the advisor employees to join the existing bargaining unit of parts employees and technicians represented by Petitioner Union.²

STATEMENT OF FACTS

The Employer is engaged in the sale of new and used automobiles at its facility located at 1090 Concord Avenue, Concord, California. The Employer is further engaged in the service of new and used automobiles at its facility. There are about 50 employees represented by the Machinists Union, including 30 repair and service technicians (i.e., mechanics who repair and service cars) and eight parts employees, who order and retrieve the parts required for the repairs and services on the cars. The Employer also employs nine employees classified as "advisors"—service advisors, floater advisor and internal advisor. Each of these advisors are responsible for inspecting and evaluating the repair and maintenance needs for every car that comes in, and in the case of the internal advisor, the repair needs for any used car coming in to be resold. Petitioner Machinists Union seeks to add these approximately nine advisors to the existing unit of parts personnel and technicians.

The Facility

The front area of the dealership is where the customers are received and greeted. The service advisors engage the customers in that front area. The customer's vehicles are brought to the service bays at the back of the facility, which is where the cars are worked on by the technicians. The parts employees also work in the back area of the facility where the technicians are able to access the parts in stock. The front area of the facility also consists of an area where the cashiers are stationed to engage with the customers on payment for services and repairs. The used car manager, warranty administrators, and internal service advisors work in that office area within the front area of the dealership. The service advisors and floater service advisors are also clustered in the front area in a separate office area. The break room and lunchroom are the same for all employees. They all have access to the same restroom upstairs. There are also restrooms in the customer area and in the shop.

² Because I am finding that the petitioned-for voting group is appropriate, it is unnecessary for me to decide whether a separate unit of service advisors, or any other bargaining unit would be appropriate.

The Existing Unit

The Technicians

Shop Foreman Todd Nankivelle supervises the technicians, including line technicians, lube technicians, master technicians, and journeymen – about 30 in total. Nankivelle is involved in the interviewing and hiring process for these technicians. Nankivelle does not supervise the parts personnel. (Tr. 30). The technicians work in the back area of the facility, in the “service bays.” (Tr. 29). The shop is accessed via car through the bays, and through a door in the back of the main building.

Technician Pay and Compensation

The technicians are paid based on an hourly rate and a contract piece rate, which is based on achieving a certain productivity level. Each type of repair has an associated flag rate – which means that a certain amount of time is allocated to a particular job and the technician either makes extra money if she or he completes the task in less time than is allotted or loses money if they exceed the time allotted. (Tr. 82). The amount of time the technician spends on the repair is called his or her flag hours.

Technicians keep their time records through a computer program called “CDK” – they punch in upon arrival, punch out for lunch, and punch back in upon return and punch out for the day. The technicians access this computer program on the computers in the shop that are specifically for technicians. The technicians work a five-day work week, 40 hours a week with two consecutive days off.

Technician Training and Skills

Most of the technicians have Automotive Service Excellence (ASE) training and certification in order to perform work on Toyota vehicles. Lube technicians and line technicians do not have that special training or certification. Line technicians primarily do “maintenance jobs,” and lube technicians do oil changes and tire rotations. Generally, the lube techs and line techs eventually obtain their ASE and become repair technicians.

Technicians perform maintenance and repairs on vehicles. The technicians wear full uniforms and are required to wear safety equipment. The technicians perform the repairs and services according to the Repair Orders (RO). The ROs are handed down from the technicians’ team leaders and are written by the advisors. The technicians retrieve the vehicles to be worked on after receiving the ROs. Any questions the technicians have about the ROs are directed to the advisor who wrote the particular RO. When the technician is done with the car, he or she will park it in the staged area, or in the detail area if it will be getting a car wash. The technician notifies the advisor in person or by putting the completed RO on the advisor’s desk. The advisor then contacts the customer to notify him or her that the car is ready for pick up.

The technicians do not contact the customers. The technicians have some interaction with customers, but only to clarify certain problems with the car – such as noises or

observations that the customer has reported to the advisor giving rise to the RO.

At times, the technicians notify the advisor that there is a repair needed that does not appear on the RO. The technician fills out an “online inspection sheet” that gets routed to the service advisor who wrote the RO. The service advisor then contacts the customer to seek his or her approval for the additional repair.

The Parts Personnel

The Parts employees supply the parts -- making sure the technicians have the physical parts to perform the service and repairs. The parts department has a front and back counter. The back counter serves the service department, getting parts for the technicians. The front counter deals with commercial accounts and customers that come in off the street seeking parts. The parts personnel are paid hourly and do not earn a commission. They are supervised by Parts Manager Kevin Kopacz.

The Teams

As of November 2019, the Employer has divided employees according to teams. Team 1 is the “Used Car Reconditioning Team,” which consists of the internal advisor and the technicians who work on used cars. The Express Team is comprised solely of technicians. Teams 2, 3, and 4 are all composed of both service advisors and technicians. The Floater Team consists solely of floater advisors. Prior to the “Team” arrangement on the schedule, the advisors would write a RO, give it to the shop foreman and the foreman would dispatch that order to the technicians. Now, the advisors dispatch the ROs to the technician team leader who then dispatches it to the technicians on that team. With respect to employee meetings, the service manager holds meetings for each classification separately – the advisors, the technicians, and parts employees each have separate staff meetings.

The Classification Sought to Be Included

The Service Manager oversees the service department, including the service advisors, internal advisor, and floater advisor. The parties stipulated on the record that a community of interest exists as between the service advisors and floating advisors.

Service Advisors

The service advisors work five days a week, alternating between an eight-hour and ten-hour day, totaling 44 or 46 hours a week, and are treated as overtime exempt by the Employer. Service advisors are paid an hourly rate as well as a commission on the individual gross profit labor sales, and on the individual customer pay, service labor, and parts gross profit. They are paid on the first and fifteenth of the month, with the check on the fifteenth including the hourly rate plus any commissions earned. They are required to wear a black polo shirt as part of their uniform.

The service advisors do not have specialized training or certification other than on-the-

job training and online training through the University of Toyota that has multiple modules on subjects like Prius maintenance, brakes, conflict resolution, and service. This online training is available to other employees as well.

The service advisors are responsible for receiving the customers who come in and need service or repairs on after purchase vehicles. "After-purchase" refers to repairs or services performed on a vehicle after it has been purchased by a customer, including installation of alarms, running boards, tow hitches, or any problems that may have been missed prior to delivery. The service advisors do a walk-around to inspect the vehicle and determine what services or repairs are needed. The service advisors do this "walk around" with the customers in order to go over the customer's service needs, but also to try and upsell things that they may have declined previously, like brakes, tires, alignments, filters, fluid flushes, and any service appropriate given the timing and mileage of the vehicle. The "walk around" on the car is a visual inspection, and includes taking tire measurements, checking the fluid levels, the wipers, and for any damage on the vehicle. The visual inspection also includes checking internally for leaky valve covers, dirty fluids, or cracked belts. The service advisor writes up a RO for these items plus whatever the customer came in for. The service advisor's RO contains codes signifying certain repairs and services. The service advisor gives the RO to the technician team leader, who then assigns it to a technician. The service advisor may also provide notes alongside the ordered repairs or services to help the technicians understand exactly what is being requested. As noted above, the technicians may ask the service advisors directly for further clarification if necessary.

The service advisors communicates directly with the technicians throughout the day, often in one-on-one dialogue to explain certain service or repairs – sometimes the Technicians come to the service advisors with questions, or the service advisors will specify in a note on the RO that the Technician should seek out the service advisors to discuss certain services and repairs. The Technicians may discover a needed repair in the course executing the RO, and she or he sends an additional work request by computer to the service advisor. In many of those cases, the technician will also walk over to the service advisor to inform him or her verbally of what exactly the vehicle needs. The service advisor will create a work cost estimate by inputting the amount of time it will take to do the job, and will then forward that request to the parts department, who then inputs the cost and tax on the necessary parts for the repair. The service advisor then contacts the customer to inform them of the additional repair or service and the cost, and the try to persuade the customer to pay for the additional work.

The service advisor communicates with the cashiers by relaying information about the customer to the cashier, such as whether or not the customer has a coupon or to notify the cashier about a customer on his or her way to settle the bill. The service advisors give the pre-invoice to the cashiers or "pre-close it to the cashiers." Whether it is a warranty service or repair or a customer-paid job, the customer needs to come to the cashier and sign and finalize the bill. In order to get their car back, the customers need to return to the cashier.

The service advisor also communicates with the parts department to determine if there is a particular part in stock, to notify the parts department of certain needed parts, or to get an estimate on parts costs for a customer. The technician will initiate a parts requisition online based on a given RO, and the parts department will complete it, noting whether the part is in or out of stock.

If the part is out of stock, a notice is sent to the service advisor who then writes an Order Card and delivers that to the parts department.

When repairs and service are completed by the technicians, the technicians return the RO to the service advisor in person or by leaving it on his or her desk. The service advisor completes the RO and prepares the final copy for the customer, contacts the customer letting him or her know of the recommendations and the actual repairs, the status of the vehicle – break measurements, tire measurements, tire pressure, quality of the air filters, what fluids were topped off, if any. Then the service advisor takes the RO to the cashier, both electronically and a hard copy in person.

Floater Service Advisor

The floater service advisor works Tuesday through Saturday, fills in for the service advisors, and earns \$13 per hour, plus commission. Just like the service advisors, the floaters speak with customers to determine the issues with the vehicle. The floaters write the ROs accordingly, and deliver those to the team leader, who then gives them to technicians to execute. About once a month, the floater steps in to do ROs for a customer coming with a used car for service and repair. The floater does not do re-conditioning of an as-yet unsold used car. That reconditioning work is performed by the internal advisor.

Internal Advisor

The internal advisor is responsible for determining the repairs needed on used cars that come in needing “reconditioning” in order to be re-sold. The internal advisor is paid hourly (\$13) plus a percentage of the sublet work (this is work outsourced to an outside vendor; 30% of the sublet or \$100, whichever is less), plus a percentage of the sales volume of vehicles, new or used, that the internal advisor worked on in some capacity by advising on repairs, services, or sublets. The internal advisor’s schedule is Monday through Friday, 40 hours a week. The internal advisor reports to the used car manager and works in the same area as the used car manager and the warranty administrator. The internal advisor wears the same polo shirt as the other service advisors and parts employees. There is no specialized training for the internal advisor, only a general safety training online and on-the-job training.

The internal advisor is responsible for writing up ROs for pre-delivery inspections (PDIs) of new cars and ROs for reconditioning of used cars. The PDIs are performed on new vehicles, used vehicles, and after-purchase vehicles. The internal advisor obtains keys from the new car order, after it gets checked in from the delivery truck, and he or she writes an RO: the first line of the order is a pre-delivery inspection, and the second line is a new car detail, the remaining RO is any other problems he or she identifies that need repair or detailing. For repair items that are beyond the warranty, or even within warranty, he speaks with the service manager to let them know of the issue and verifies whether it is warrantable. The warranty advisor will determine if something is within warranty or not. In the case of a low pressure/tire light, he or she checks with the technicians to find out if there is something more than low or high pressure causing the light to go off. The technician will plug in a scanning tool to check the communication between the monitor and the vehicle system. If it is something beyond pressure imbalance, the technician will put in a requisition with the part department if it needs any parts, such as a new sensor.

During the course of the internal advisor's work, he or she may communicate with the technicians, the used car manager, and the detail department. The internal advisor and the technicians communicate about repairs or services that the vehicle may need beyond the internal advisor's inspection, including brakes, tires, missing parts, and safety items. Such communication occurs throughout the day. Likewise, communication with the parts department occurs throughout the day on every car. There is limited communication between the internal advisor and the cashiers – typically only if there is a question from the customer when he or she picks up the vehicle. There is also some communication with the cashier for “due bill items” – those items that are due to the customer after a sale. Those occur about three to eight times a day, each time prompting some communication with cashiers.

The internal advisor also writes orders for the outside vendors referred to as “sublet work.” This includes windshield repair, paint work, dent work, body shop and wheel repair, and touch-ups. The Employer pays a flat rate to the sublet vendor, and then charges a mark-up to the customer. Though the internal advisor does not customarily perform “customer pay work,” where a customer is requesting a certain repair or service, there are certain occasions when the internal advisor will perform this work that is typically done by the service advisors/floater advisor. In other words, the internal advisor has the basic skill set to be able to perform this work.

Other Classifications

The Employer employs a single warranty administrator who is responsible for processing payments for services and repairs that are under warranty. Services and repairs covered under warranty are paid by Toyota, not the customer. The Employer also employs five cashiers, who are responsible for receiving and processing payments for services and repairs directly from the customers. These positions interact with the three types of advisors to close out a service or repair initiated by the advisors' repair orders. This interaction typically consists of the advisor handing off the RO to the cashier or warranty advisor that the service or repairs are completed and that the customer is on his or her way to settle the bill and pick up his or her vehicle.

A. Board Law

The applicable standard for evaluating the appropriateness of adding additional employees to a preexisting bargaining unit is the Board's *Armour-Globe* doctrine. Under the *Armour-Globe* doctrine, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included share a community of interest with unit employees and “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner-Lambert Company*, 298 NLRB 993, 995 (1990); *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). A certifiable unit need only be an appropriate unit, not the most appropriate unit. *International Bedding Company*, 356 NLRB 1336 (2011), citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd*, 190 F.2d 576 (7th Cir. 1951). See also *Overnite Transportation Co.*, 322 NLRB 723 (1996) (the unit sought need not be the ultimate, or the only, or even the most appropriate unit). If the petitioned for unit

is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, 337 NLRB 152, 153 (2011).

While the petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit, as noted above, the parties stipulated at the hearing that the service advisors and the floater advisors share a community of interest. In light of this stipulation, which I find to be supported by the record evidence, it is clear that the service advisors and the floater advisors necessarily constitute an identifiable, distinct segment. See *Warner-Lambert Company*, supra. Specifically, there are no other employees who perform the work of receiving customers, inspecting vehicles, up-selling services and repairs to the customers, committing the customer to those services and repairs, drafting ROs for the technicians, and shepherding that process to the end point, in which the advisor delivers the customer to the cashiers for payment.

Likewise, I find that the internal advisors are a part of that same identifiable, distinct segment. In this regard, the record shows that internal advisors perform the same essential task of evaluating and ordering necessary repairs and services – the primary difference being that this is performed on used cars being prepared for sale to used-car-purchasing customers. The service advisor, floater advisor, and internal advisor are all required to draft ROs for the technicians and are responsible for communicating with the technicians to clarify any special instructions on a given vehicle. Again, the difference between their respective duties is that the internal advisor is performs this function for used cars, rather than new cars and returning customers after purchase. This distinction between new and used cars has very little bearing on what the advisor in each instance is doing: an inspection of the vehicle, the drafting of ROs, the dispatching of the RO to the technicians (via a team lead). Any questions from the technicians on the RO are directed to the originating advisor, thus, the advisor in both roles must be able to speak the same technical language with the technicians. That in and of itself is a skill that ties the advisors – whether internal, floater or otherwise -- together. There are no other employees at the facility that perform this ‘advisor’ function.

Further, the pay structure is similar between the internal advisor and service/floater advisors. Each are paid a base rate, plus commissions. Where those commissions come from, be it from the up-sale of servicing or repairs in the case of service/floater advisors, or from the subletting and sales volume for the internal advisors, the general structure is substantially similar.

Finally, I note that contrary to the Employer’s argument on brief, there is no basis to conclude that the warranty administrator and the cashiers must be included among the petitioned for employees. In this regard, the cashiers and the warranty administrator are primarily performing the work of the payment transactions with the customers – they do not explain or recommend the repairs and services to customers, and do not have any relationship to the services provided in the shop other than to provide the business end of each transaction – namely, the handling of payments. As such, there is no requirement that these classifications be included in the petitioned-for group of employees.

In light of the foregoing, the only remaining inquiry is whether the internal advisor and service/floater advisors share a community of interest with the existing unit of technicians and

parts employees. Such an analysis involves reviewing several factors and comparing the disputed employees to determine whether they share a sufficient community of interest to be included in the same unit.

Typical factors to be considered include the nature of employee skills and functions, common supervision, interchange and contact among employees, the degree of functional integration, the work situs, centralized control of labor relations, commonality of wages, hours, and working conditions, bargaining history, and the extent of organization. *United Operations, Inc.*, 338 NLRB 123 (2002); *International Bedding Company*, supra, at 1337; *Boeing Co.*, supra, at 153; *NLRB v. Paper Manufacturers Co.*, 786 F.2d 163, 167 (3d Cir. 1984); *Rinker Materials Corp.*, 294 NLRB 738, 738-739 (1989). While a petitioner's position regarding the scope of the unit is also a relevant consideration, a petitioner's position is not dispositive with regard to what constitutes an appropriate unit, and certain proposed units, such as those based on an arbitrary, heterogeneous or artificial grouping of employees will be found to be inappropriate. *International Bedding*, supra, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *E.H. Koester Bakery Co., Inc.*, 136 NLRB 1006, 1012 (1962); *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973); *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 6 (2016) (extent of organization cannot be given controlling weight).³ In addition to these traditional community of interest factors, I also assess and compare the compensation methods for the advisors and the technicians and parts employees as well as the shifts and schedules of the advisors and the and technicians and parts employees.

Application of Board Law to this Case

Employee Compensation

The already included technicians are paid an hourly rate, plus an hourly production bonus, dictated by the time it takes the technicians to complete a job as compared to the amount of time allotted or "flagged" time for the job by Toyota. In contrast, the already included parts employees are paid on an hourly basis only. Thus, as a starting point, the pay structure within the existing unit is itself discordant.

The internal advisor, service advisors, and floater advisors are each paid an hourly rate (\$13), plus commission on certain services, repairs, and up-sales, and in the case specifically of the internal advisor, on the subletting of certain services.

In this regard, since the existing unit already contains a mix of pay structures and

³ Given that this is an *Armour-Globe* case, I have primarily analyzed the facts pursuant to the *Warner-Lambert* standard discussed above rather than under the Board's more recent decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). The Board has indicated that *Specialty Healthcare* was not the correct standard for determining whether an *Armour-Globe* self-determination election was appropriate, and this remains true after *PCC Structural*. See *Republic Services of Southern Nevada*, 365 NLRB No. 145, slip op. at 1, fn. 1 (2017); *South Texas Project Nuclear Operating Company*, 2014 WL 5465003 (footnote of Member Johnson finding it inappropriate to apply *Specialty Healthcare* to determine whether a self-determination election is appropriate). However, I have considered *PCC Structural* and its progeny insofar as they address general community of interest principles applicable in any representation case, including *Armour-Globe* cases.

incentives, the variations in the types of commissions and bonuses earned by the internal advisor versus the service and floater advisors, are not dispositive. Overall, I find that the factor of employee compensation is neutral in determining whether a community of interest exists between the advisors and the technicians and parts employees in the existing unit.

Employee Schedules and Hours

The standard work schedule for technicians is a five-day work week, 40 hours a week with two consecutive days off. The internal advisor typically works Monday through Friday, 40 hours a week. The service advisors work five days a week, alternating between an eight hour and ten-hour day, totaling 44 or 46 hours a week. The floater advisors work Tuesday through Saturday and overlap in schedule with the technicians and parts employees. The parts employees also overlap in their work schedules with the technicians and advisors.

Given that parts employees, technicians, service advisors, floater advisors, and internal advisors all work different shifts with different start and end times, overlapping on the core hours of work week and workday, I find this factor does not weigh against, or in favor of, finding a community of interest between these classifications. Instead, I find this to be a neutral factor in assessing the asserted community of interest between the advisors and the existing unit of technicians and parts employees.

Nature of Employee Skills and Functions

The existing unit of parts employees and the technicians perform distinctly different functions for the Employer – yet both roles are related to the physical execution of the repairs and services to the vehicles. The advisors, in contrast, have no physical contact with the vehicle parts or machinery. Nevertheless, the advisors evaluate and perform visual inspection of the vehicles, which he or she must translate into ROs for the technicians to execute. In this regard, the skill set is different among these employees, yet, they all share a common knowledge of automotive parts and machinery that underlies each function – with varying degrees of expertise.

Given the similar basic knowledge required across each position, while performing distinct functions, I find that the nature of employee skills and functions is a neutral factor toward finding of a community of interest between the petitioned-for service advisors and the parts personnel and technicians in the existing unit in this case.

Common Supervision

The service manager oversees the service department, which encompasses the advisors, the technicians, and the parts employees. While the shop foreman below the service manager oversees the technicians, he does not oversee the parts employees in the existing unit, and likewise, he does not oversee the advisors. The parts employees are supervised by the parts manager.

Thus, there is a commonality of upper level supervision in the form of the service

manager. While there is an absence of common frontline supervisors between the advisors, technicians, and parts personnel, I note that even in the existing unit the parts personnel are also supervised by a person other than the technicians' supervisor. Thus, I find that the absence of common first line supervision to weigh less than the finding of common management under the service manager. As such, I find this factor weighing in favor of, or at worst being a neutral factor toward finding a community of interest with Petitioner's petitioned-for unit.

Degree of Functional Integration

I find that the record supports a finding that a substantial degree of functional integration exists between the petitioned-for advisors and the already included technicians and parts employees. As an initial matter, internal advisor and service advisors are each on teams with multiple technicians. This reflects the larger fact that their functions are so closely related that they can operate most efficiently as a team, bypassing any bureaucracy, hierarchy, or other middle person or process. The floater advisors sit on a team of their own, presumably because they float between teams. As such, the fact that the floater advisors sit on a team of their own does not diminish the degree of integration they too exhibit in relation to the existing unit. Notably, there are no parts employees assigned to the various teams, yet they are still within the existing unit. As such, the structure of the various teams reflects the fact that the various advisors are highly integrated with the existing unit.

Further, the technicians are in regular contact with the various advisors on both a face-to-face and electronic basis. The record reflects that each position is dependent upon the work of the other position to fulfill its essential job function. In this regard, the service advisors meet with each customer to go over potential issues and repairs of their vehicles and prepare ROs documenting the work authorized by the customer. Technicians perform the work outlined on the repair order. Any variations to the repair order, questions about the repair order, or additional repairs found necessary by the service technicians, must be communicated to the advisors, who are then tasked with contacting the customer to discuss the issue and obtain authorization from the customer before the technician can perform the needed repairs. Thus, the positions must communicate with each other regularly throughout the course of their work and each is dependent upon the work of the other in order to fulfill their own responsibilities. In addition, the parts employees need direction and take requests from the advisors regarding parts for the recommended repairs and services set forth in the ROs. The record establishes that the advisors consult with parts employees about the availability of parts and the requisition of necessary parts.

The three types of advisors and the existing unit of technicians and parts employees are simultaneously engaged in providing the essential product of the Employer's service department, namely, the service and repair of customer vehicles. While employees in each position perform a different facet of the service and repair of customers' vehicles, I find that these employees comprise a functionally integrated group engaged in a singular pursuit. See *Harry Brown Motor Company*, 86 NLRB 652, 654 (1949) (perfectly clear that service departments are heavily dependent upon the parts departments and cannot function without them; sale of parts to general public by parts department employees did not destroy community of interest between parts employees and service employees).

While employees employed in each position work in a distinct area of the Employer's facility, the service bays are near the parts department back counter area, and the advisors in the front of the facility have full access to the back area. Even though employees employed in each position work slightly different shift configurations, the shifts available to those employees overlap so that there is coverage from the advisors and the existing unit of parts employees and technicians during each regular workday.

For these reasons, I find that the factor of functional integration supports the petitioned-for unit in this case. Cf., *The Boeing Co.*, 368 NLRB No. 67, slip op. at 6 (2019) (functional integration is only one factor in the community of interest analysis).

Interchange Among Classifications

The record is devoid of evidence of employees who have moved between the Advisor position and any parts or technician position on either a temporary or permanent basis. Given the complete lack of interchange on a temporary or permanent basis, I find that the interchange factor favors the Employer's position with respect to the lack of community of interest between the three advisor positions and the existing unit of parts employees and technicians.

Contact Between Employees

While I have accorded weight to the complete lack of interchange, I now must also assess the evidence of work-related contact between the advisors and the technicians and the parts employees. See, e.g., *Boeing*, supra, 368 NLRB No. 67, slip op. at 5 ("contact is the only factor that unreservedly favors the petitioned-for unit").

With respect to employee meetings, the record reflects that the service manager holds meetings for each classification separately – the advisors, technicians, and parts employees each have separate meetings. As such, there are no opportunities for interaction between advisors, technicians, and parts employees through these staff meetings.

However, the record contains evidence of daily interactions between parts employees and advisors with respect to locating and procuring the necessary parts with which to complete repairs. As noted above, the advisors interact daily with the technicians on nearly a car-by-car basis. These interactions appear to occur in a myriad of forms including face-to-face, electronic, and by handing off paperwork (ROs), all of which deserve equal weight in my view.

On the bases stated above, I find that the factor of day-to-day contact on a regular basis between advisors and the existing unit of technicians and parts employees favors a finding of community of interest in this case.

Commonality of Wages, Hours and Working Conditions

As noted above, given the opportunity for advisors and technicians to earn both a base pay and additional pay either through commissions or productivity incentives, I do not find

there to be a material difference in pay structures as between the technicians and advisors. See *Indianapolis Mack Sales and Service, Inc.*, 288 NLRB 1123, 1125 (1988) (community of interest between parts and service employees notwithstanding differences in bonus calculations as between each group); *Hanna Motor Company*, 94 NLRB 105, 107 (1951) (community of interest existed where parts employees although paid in different manner than service department employees received approximately same pay as most service department employees). Notably, the parts employees only earn a base pay, and thus the pay structure of the advisors has more in common with the technicians than even the existing members of the unit do. The advisors have access to the Employer's 401k plan, while the technicians and parts employees have access to the Union's 401k plan as set forth in the parties' CBA. In light of this, I find the pay structures substantially similar between the advisors and the existing unit.

All employees use the same computer system to log their hours, albeit at different locations. There is one single lunchroom/breakroom used by employees in all job classifications without any restriction. All employees have access to the same restrooms. *Indianapolis Mack*, supra, 288 NLRB at 1126 (community of interest found where parts and service employees used same entrances, ate in same lunchrooms, and parked in same parking lots). While the technicians work in the service bays, and the advisors work in the front area, there is access to both areas throughout the workday. The technicians wear a mechanics uniform and safety gear. All other employees are required to wear the same black polo shirt and non-slip shoes. The Employer's employee handbook applies equally across the classifications.

With the above factors in mind, I find that the commonality of wages, hours, and working conditions as between the advisors and the existing unit of technicians and parts employees supports the existence of a community of interest.

Bargaining History

While the record contains the Agreement applicable to the technicians and parts employees, there was no evidence in the record with respect to the overall duration of the bargaining relationship between the Petitioner and the Employer. There is no evidence in the record that the composition of the bargaining unit has changed since its original recognition or certification. I have also considered that there is no evidence of a history of collective bargaining for advisors in a different unit and that no union seeks to represent them separately or in a different unit. I therefore find that this factor does not weigh for or against finding the petitioned-for voting group to be appropriate.

Centralized Control of Labor Relations

No party disputes the existence of a centralized control of labor relations. As such, this factor weighs in favor of finding a community of interest exists between the advisors and the technicians and parts employees in the existing unit.

After examining the record as a whole and weighing the factors above, I find that the factors of common supervision, degree of functional integration, contact between employees,

commonality of wages, hours and working conditions, and centralized control of labor relations fully support Petitioner's position with respect to the alleged community of interest between the advisors and the technicians and the parts personnel. Other applicable factors, including the employee schedules and hours, employee compensation, nature of employees' skills and functions, and bargaining history, were neutral factors. While the interchange among classifications was decidedly absent, and therefore supporting the Employer's position that no community of interest exists, this was the sole factor fully weighing against a community of interest.

CONCLUSIONS AND FINDINGS

I have carefully weighed the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold a self-determination election among the advisors to join the existing unit of technicians and parts employees as the same unit. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Advisors employed by the Employer at its facility located at 1090 Concord Avenue, Concord, California; excluding employees represented by a labor organization, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above appropriate voting group will be deemed to have indicated their desire to be included in the existing unit of employees currently represented by the Petitioner, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they

wish to be represented for purposes of collective bargaining by the Petitioner, Machinists Automotive Trades District Lodge 190, Machinists Local 1173. If a majority of valid ballots are cast for representation by the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing Technicians, and Parts employees currently represented by the Petitioner. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

The ballot will ask:

Do you wish to be represented for purposes of collective bargaining by Machinists Automotive Trades District Lodge 190, Machinists Local 1173?

A. Election Details

The election will be held on Thursday, March 12, 2020, from 11:30 a.m. to 12:30 p.m. at the Employer's facility located at 1090 Concord Avenue, Concord, California.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 29, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **March 6, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties. A certificate of service must be filed with the Board together with the request for review

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 4th day of March 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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